



Judiciary Appropriations Committee

Tuesday, April 11, 2006

9:30 a.m.

28 House Office Building



Florida House of Representatives

Fiscal Council
Judiciary Appropriations Committee

Allan Bense
Speaker

Jeff Kottkamp
Chair

Agenda for
Tuesday, April 11, 2006
9:30 a.m.
28 House Office Building

- I. Call to Order
- II. Roll Call
- III. HB 709 CS on Court Costs for Drug Court Programs by Representative Quinones
- IV. HB 849 CS on Regulation of Foreign Language Court Interpreters by Representative Flores
- V. HB 1461 on Court System Funding by Representative Domino
- VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 709 CS Court Costs for Drug Court Programs
SPONSOR(S): Quinones and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 940

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---------------------------------------|----------------|-------------------|----------------|
| 1) Judiciary Committee | 12 Y, 0 N | Poblete | Hogge |
| 2) Finance & Tax Committee | 8 Y, 0 N, w/CS | Rice | Diez-Arguelles |
| 3) Judiciary Appropriations Committee | | Galloway/Brazzell | DeBeaugrine |
| 4) Justice Council | | | |
| 5) _____ | | | |

SUMMARY ANALYSIS

This bill authorizes counties in which a drug court program has been established, to adopt an ordinance requiring circuit and county courts to impose a \$6 court fee against any person who pleads guilty to, or pleads nolo contendere to, or is convicted of, regardless of adjudication, certain specified offenses involving the use of alcohol or abuse of other substances resulting in the payment of a fine or civil penalty. The revenues generated from this fee are to fund the programs operational and administrative costs.

The funds generated by this ordinance will be administered by the trial court administrator under the direction of an advisory committee appointed by the chief judge for the circuit in which the county is located. Clerks would retain eight percent of the revenue generated as fee income.

Provided that a local government adopts an ordinance under the provisions of this bill, there will be a positive indeterminate impact to local government revenues.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government and Ensures Lower Taxes: This bill authorizes counties to require court imposition of a court cost against persons committing certain offenses to provide funding for drug court programs.

B. EFFECT OF PROPOSED CHANGES:

Background

Drug Courts

Dade County created the first drug court in Florida in 1989 as a response to a federal mandate to reduce the inmate population or lose federal funding. The focus of the Dade County Drug Court was to provide treatment for offenders and to reduce recidivism. Rather than simply sentencing offenders for short periods of incarceration or probation, the court supervised offenders by holding random drug tests, requiring frequent court appearances, imposing sanctions for continued drug use, and providing incentives to maintain sobriety.¹

Drug courts operate in each of Florida's 20 judicial circuits. As of February 2006, there were a total of 46 adult, 30 juvenile, 19 family dependency, and 2 other types of drug courts operating in 46 counties within the state.

Drug court programs typically provide services and monitoring in the pretrial stage. The programs extend the pretrial stage and use the threat of a criminal prosecution and conviction to encourage offender compliance. Drug courts operate on a reward and punishment system. Offenders successfully completing a drug court program receive a reduced charge or possibly even dismissal of the charge. For those that fail to comply with the program, the punishment is typically jail time, plus continuation of the criminal process and possible additional jail time upon conviction.

Funding

Section 397.334, F.S., authorizes counties to fund treatment-based drug court programs and requires such counties to include therapeutic jurisprudence principles, but limits the amount of state funding that can be used for these purposes. Section 397.334(5), F.S., reads:

"If a county chooses to fund a treatment-based drug court program, the county must secure funding from sources other than the state for those costs not otherwise assumed by the state pursuant to s. 29.004, [F.S.]."

Section 29.004(10)(d), F.S., indicates that the state will supply funds for "service referral, coordination, monitoring, and tracking for treatment-based drug court programs," but will not fund the "costs associated with the application of therapeutic jurisprudence principles by the courts."

Court Costs

¹ Report on Florida's Drug Courts, July 2004, http://www.flcourts.org/gen_public/family/bin/dcreport.pdf, accessed March 2006.
STORAGE NAME: h0709d.JA.doc
DATE: 4/6/2006

As set forth in ch. 938, F.S., there are four categories of court costs. There are mandatory court costs in all cases, mandatory court costs in specific cases, mandatory court costs authorized by local governmental entities, and discretionary court costs in specific types of cases. In each category there are certain court costs related to drug offenses.

Mandatory court costs applying in all cases:

- \$3 cost (authorized under s. 938.01, F.S.) for any person convicted for violation of a state penal or criminal statute or a municipal or county ordinance;
- \$50 cost (authorized under s. 938.03, F.S.) for any person pleading guilty or nolo contendere to, or being convicted of, or adjudicated delinquent for, any felony, misdemeanor, delinquent act, or criminal traffic offense;²
- \$200 cost (authorized under s. 938.05, F.S.) for persons pleading guilty or nolo contendere to, or being convicted of, or adjudicated delinquent for, any felony, \$50 for each misdemeanor or criminal traffic offense;
- 5% surcharge (authorized under s. 938.04, F.S.) imposed on any fine for any criminal offense by law, including a criminal traffic offense; and,
- \$20 surcharge (authorized under s. 938.06, F.S.) on any fine prescribed by law for any criminal offense.

Mandatory court costs in specific cases:

- \$135 fine (authorized under s. 938.07, F.S.) for driving or boating under the influence; and,
- \$15 court cost (authorized under s. 938.13, F.S.) for any person found guilty of any misdemeanor in which the unlawful use of drugs or alcohol is involved.

Mandatory costs authorized by local governmental entities:

- Up to \$65 (authorized under s. 939.185, F.S.) for persons pleading guilty or nolo contendere to, or being convicted of, or adjudicated delinquent for, any felony, misdemeanor or criminal traffic offense to be used only in the county in which the offense occurred; and,
- In counties with a teen court, a \$3 cost (authorized under s. 938.19, F.S.) against each person pleading guilty or nolo contendere to or who is convicted of, regardless of adjudication, a violation of a criminal law, a municipal or county ordinance, or pays a fine or civil penalty for any violation of chapter 316, F.S.

Discretionary costs:

- As authorized under ss. 938.21 and 938.23, F.S., a defendant may be charged an amount up to, or an amount equal to, the authorized fine for those persons convicted for driving under the influence, disorderly intoxication, open house parties, or for a violation of any section under chapter 893, F.S., (drug abuse and prevention control), chapter 562, F.S., (beverage law enforcement), chapter 567, F.S., (liquor), or chapter 568, F.S., (intoxicating liquors in counties where prohibited);
- \$100 fine (authorized under s.938.25, F.S.) against any defendant who pleads guilty or nolo contendere to, or is convicted of, a violation of any provision of s. 893.13, F.S., which makes it

² Fla. Stat. 938.03

unlawful to sell, manufacture, deliver, or possess with the intent to sell, manufacture, or deliver, a controlled substance; and,

- As authorized under s. 938.27, F.S., a convicted criminal defendant is required to pay the documented costs of prosecution if so requested.

Effect of Bill

This bill authorizes counties to adopt an ordinance requiring circuit and county courts to impose a \$6 fee against any person who pleads guilty to, or pleads nolo contendere to, or is convicted of, regardless of adjudication, a violation of ch. 893, F.S., (substance abuse and controlled substances); or a municipal ordinance, a county ordinance, or any provision of ch. 316, F.S., (state uniform traffic control laws) involving the use of alcohol or abuse of other substances resulting in the payment of a fine or civil penalty. This mandatory cost would be in addition to any fine, civil penalty or other applicable court cost.

The funds generated by this mandatory cost would be administered by the court administrator under the direction of an advisory committee appointed by the chief judge for the circuit in which the county is located. Clerks would retain eight percent of the revenue generated as fee income.

C. SECTION DIRECTORY:

Section 1. Creates s. 938.20, F.S., relating to court costs for drug court programs, authorizing county and circuit courts to impose a fee upon adoption of an ordinance by the county.

Section 2. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The clerks of court would collect additional revenue; however, since this revenue is court-related, a portion of it ultimately accrues to the state (see Fiscal Impact on Local Governments below).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Positive recurring impact, but of an indeterminate amount, since the number of counties authorizing this fee and the number of persons subject to this cost is unknown.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Should a county adopt an ordinance under the provisions of this bill, applicable persons would pay an additional \$6 in court fees.

D. FISCAL COMMENTS:

The total amount of revenue for drug courts generated by imposition of this fee depends on the number of persons subject to it. No money is generated unless the county adopts the applicable ordinance. Of each \$6 mandatory cost, the drug court program would receive \$5.52 and the Clerk of the Court \$0.48.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Finance and Tax Committee adopted one amendment on March 31, 2006. This amendment conformed the House bill to SB 940. The amendment did the following:

- Removed the assessment of the \$6 fee for violations of s. 318.14(9) or (10), F.S. Violations under this section were removed because they involved non-substance abuse violations.
- Allowed for the assessment of the fee against any parking violation related to substance abuse.

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CHAMBER ACTION

The Finance & Tax Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to court costs for drug court programs;
creating s. 938.20, F.S.; authorizing counties to provide
by ordinance for funding of drug court programs through
the assessment of an additional mandatory court cost;
providing for the assessment to be imposed against persons
who plead guilty or no contest to or are convicted of
certain violations of drug abuse prevention and control
provisions or violations of certain municipal or county
ordinances or pay a fine or civil penalty for traffic
violations involving alcohol or other substance use or
abuse; providing for collection and deposit of the
assessment; providing for administration of the funds;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 938.20, Florida Statutes, is created to
read:

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938.20 Court costs for drug court programs.--

(1) Each county in which a drug court program has been established under s. 397.334 may require by ordinance the assessment of a mandatory cost in the sum of \$6 which shall be assessed by both the circuit court and the county court in the county against every person who:

(a) Pleads guilty or nolo contendere to, or is convicted of, regardless of adjudication, a violation of chapter 893 or a violation of a municipal or county ordinance involving the use of alcohol or other substance use or abuse; or

(b) Pays a fine or civil penalty for any violation of chapter 316 involving the use of alcohol or other substance use or abuse.

The \$6 assessment shall be in addition to any fine, civil penalty, or other court cost and may not be deducted from the proceeds of that portion of any fine or civil penalty which is received by a municipality in the county or by the county in accordance with ss. 316.660 and 318.21. The \$6 assessment shall specifically be added to any civil penalty paid for a violation of chapter 316, whether such penalty is paid by mail, paid in person without request for a hearing, or paid after a hearing and determination by the court.

(2) The clerk of the circuit court shall collect the \$6 assessment established pursuant to subsection (1) and shall deposit the assessment monthly into an account specifically designated for the operation and administration of the drug court program within the county and which is under the authority

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52 of the trial court administrator for the respective circuit,
53 less 8 percent, which shall be retained as fee income for the
54 office of the clerk of the circuit court, together with other
55 moneys that become available for establishing, operating, and
56 administering drug court programs under state law.

57 (3) Assessments deposited into an account specifically
58 designated for the operation and administration of the drug
59 court programs within such county shall be administered by the
60 trial court administrator for the respective circuit under the
61 direction of the advisory committee appointed by the chief judge
62 in each circuit pursuant to ss. 948.08(7) and 985.306(2).

63 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 849 CS

Regulation of Court Interpreters

SPONSOR(S): Flores

TIED BILLS:

IDEN./SIM. BILLS: SB 1128

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---------------------------------------|-----------------|---------------------|--------------------------------|
| 1) Judiciary Committee | 12 Y, 0 N, w/CS | Hogge | Hogge |
| 2) Business Regulation Committee | 19 Y, 0 N | Watson | Liepshutz |
| 3) Judiciary Appropriations Committee | | Brazzell <i>HMB</i> | DeBeaugrine <i>[Signature]</i> |
| 4) Justice Council | | | |
| 5) _____ | | | |

SUMMARY ANALYSIS

HB 849 requires the Supreme Court to establish minimum standards and procedures for foreign language court interpreters. These would cover qualifications, certification, professional conduct, discipline, and training. It would also permit the Supreme Court to charge fees to applicants seeking to become certified or renew their certification as a court interpreter. These revenues would be used to offset the costs of administering the certification program and performing other related responsibilities. The Supreme Court would be authorized to appoint or employ personnel to assist the court in administering these responsibilities.

This bill has an indeterminate fiscal impact upon state government. It does not appear to have a fiscal impact on local governments. See "Fiscal Analysis & Economic Impact Statement", below.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government. The bill authorizes the creation of a new program for certifying, training, and disciplining foreign language court interpreters. It specifically authorizes the Supreme Court to employ necessary staff to administer the program.

Ensure lower taxes. The bill authorizes the Supreme Court to impose fees to fund the foreign language court interpreter certification program and other responsibilities authorized in the bill.

B. EFFECT OF PROPOSED CHANGES:

Background

Courts have determined that indigent defendants have a constitutional right to a foreign language court interpreter when a fundamental interest is at stake. Implicated are the due process, equal protection, and confrontation clauses of both the federal and Florida constitutions. Additionally, in Florida, the access to courts provision is also implicated.¹ Judges have broad discretion to determine whether or not an interpreter is necessary in a particular case. By statute, the Legislature requires a judge to appoint an interpreter when the judge determines that a witness cannot hear or understand the English language or cannot express himself or herself in English sufficiently to be understood.² Generally, it is thought that the appointment of an interpreter serves to protect the rights of parties; assists in creating an English-language record; and facilitates the fair and efficient administration of justice.

Florida statutory law does not include standards for those serving as foreign language court interpreters and makes no provision for their certification and training. According to the Supreme Court Interpreter's Committee, Florida courts differ in the way in which they manage, regulate, and coordinate court interpreter services.³ The state courts system has developed a voluntary statewide program to assist trial court administrators in assessing the qualifications of foreign language court interpreters, including the use of qualifications examinations and an orientation program with an overview of the Code of Professional Responsibility. Additionally, as a member of the Consortium for State Court Interpreter Certification, Florida has access to standardized testing instruments, among other services and products. Interpreters passing the written and oral tests and attending the orientation program qualify for inclusion on the Registry of Tested Court Interpreters. Approximately 300 interpreters are currently included on this registry; languages spoken include Spanish, Haitian, Russian, Italian, and Portuguese. However, individuals who are not listed on the registry are still eligible to (and do) serve as court interpreters.

A survey of the ten states with the highest number of persons who do not speak English well, as determined by the U.S. Census, show that five states statutorily delegated the authority to regulate foreign language interpreters to the court, three states do not certify interpreters, one state statutorily delegated the authority to the Executive and one state's Judiciary regulates interpreters under its inherent authority.⁴

The Supreme Court Interpreter's Committee report concluded that interpreters working in the judicial system must meet a higher standard than mere bilingualism. It concluded that court interpreters have

¹ Fla. Const. art. I, s. 21.

² Fla. Stat. 90.606(1)(a) (2005)

³ Supreme Court Interpreter's Committee, Report and Recommendations 7 (October 2003).

⁴ Id. at 32. This list excludes Florida which the census ranks fourth in terms of non-English speaking persons.

specialized knowledge of legal terminology, slang and technical jargon of police officers and expert witnesses.⁵

Proposed changes

The bill requires the Supreme Court to establish minimum standards and procedures for foreign language court interpreters. These would cover qualifications, certification, professional conduct, discipline, and training. The bill also permits the Supreme Court to charge fees to applicants seeking to become certified or renew their certification as a court interpreter. These revenues would be used to offset the costs of administering the certification program and performing other related responsibilities. The Supreme Court would be authorized to appoint or employ personnel to assist the court in administering these responsibilities.

Currently, the Supreme Court is authorized to establish analogous standards and procedures for court reporters and for mediators and arbitrators similar to those proposed in this bill for foreign language court interpreters, but with two primary differences: one, in the court reporter program, the Supreme Court must impose fees, whereas for the proposed court interpreter program and the mediators/arbitrators program it is discretionary; and two, the fees imposed in the court reporter program must be in an amount sufficient to fully fund the cost of administering the certification program. Under this proposed program and the mediator/arbitrator program, no distinction is made between full or partial funding. In 2003, the Legislature repealed the provision granting fee authority to the Supreme Court for the court reporter program, only to restore it in 2004.

C. SECTION DIRECTORY:

Section 1 creates the foreign language court interpreter certification program and authorizes the Supreme Court to charge fees and employ staff for this purpose.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate because the imposition of a fee by the Supreme Court is optional and a specific fee amount has not yet been established by the Supreme Court. However, assuming a \$150 certification fee, a baseline number of certified interpreters of 300 with 25 additional persons becoming certified each year, and biennial certification, the revenues from certification fees would be \$48,750 in FY 06-07, \$3,750 in FY 07-08, and \$56,250 in FY 08-09. These estimates do not include revenues from orientation registration or testing fees; such fees are currently being charged and collected from individuals seeking to be tested and placed on the registry.

2. Expenditures:

The Supreme Court presently has 1 FTE funded by general revenue permanently assigned to administer the court interpreters program. Depending on the requirements for certification imposed by the court, additional FTE's and expense funding may be needed to administer the program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

⁵ Id. at 9.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Foreign language court interpreters may be subject to payment of fees for certification.

D. FISCAL COMMENTS:

The degree to which revenues offset expenditures depends upon the level of fees that are charged, the design of the program, and the number of individuals seeking certification. The extent to which the bill will stimulate additional individuals to seek certification as foreign language court interpreters is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires program fees to be deposited into the Grants and Donations Trust Fund within the state courts system. HB 5301 creates the Operating Trust Fund in the state courts system to receive such revenue; HB 849 should be amended to deposit fees in this trust fund.

It is unclear whether the bill requires individuals providing court interpreting services to be certified by the Supreme Court. According to staff from the state courts system, interpretation services for some "exotic" languages is in such low demand due to the small number of individuals involved in the court system speaking those languages that providing a certification process for their interpreters would not be feasible, nor would interpreters be likely to want to obtain certification.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Judiciary Committee adopted two amendments and reported the bill favorably as a CS. The CS differs from the original bill in that the CS 1) clarifies that "court interpreter" is a foreign language court interpreter and 2) removes the provision restricting Supreme Court fee authority to the amount necessary to "partially fund" this program.

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CHAMBER ACTION

The Judiciary Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to regulation of foreign language court interpreters; requiring the Supreme Court to establish standards and procedures for qualifications, certification, conduct, discipline, and training of appointed foreign language court interpreters; authorizing the Supreme Court to set fees for certification applications; specifying the use and deposit of such fees; authorizing the Supreme Court to appoint or employ personnel for certain administration assistance purposes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The Supreme Court shall establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training of foreign language court interpreters who are appointed by a court of competent jurisdiction. The Supreme Court may set fees to be

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24 charged to applicants for certification and renewal of
25 certification as a foreign language court interpreter. The
26 revenues generated from such fees shall be used to offset the
27 costs of administration of the certification program and shall
28 be deposited into the Grants and Donations Trust Fund within the
29 state courts system. The Supreme Court may appoint or employ
30 such personnel as is necessary to assist the court in
31 administering this section.

32 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1461

Court System Funding

SPONSOR(S): Domino

TIED BILLS:

IDEN./SIM. BILLS: SB 2024

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---------------------------------------|--------|---------------------|--------------------------------|
| 1) Judiciary Appropriations Committee | | Brazzell <i>hrs</i> | DeBeaugrine <i>[Signature]</i> |
| 2) Judiciary Committee | | | |
| 3) Fiscal Council | | | |
| 4) _____ | | | |
| 5) _____ | | | |

SUMMARY ANALYSIS

In November 1998, voters approved Revision 7 to Article V of the Florida Constitution. Article V establishes the judicial branch of government. According to the ballot summary, Revision 7 "allocates state court system funding among the state, counties, and users of courts." Revision 7 was to be "fully effectuated" by July 1, 2004.

HB 1461 deletes the requirement that the Department of Revenue determine whether a county is budgeting sufficient funding (as determined by a formula) to fund certain court-related responsibilities, and, if a county is not, withholding revenue-sharing funds equal to the shortfall and providing these to the circuit court.

Instead, the bill provides that counties that expend a specified amount of funds (as determined by a different formula) have met their court-related funding obligations. The bill provides exceptions for when lower funding would be acceptable. There would be no penalty if a county did not expend the specified funds.

The bill appears to have a fiscal impact on state and local governments. See "Fiscal Comments".

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: This bill reduces the responsibilities of the Department of Revenue to review counties' court-related budgets and take other related actions.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

In November 1998, voters approved Revision 7 to Article V of the Florida Constitution. Article V establishes the judicial branch of government. According to the ballot summary, Revision 7 "allocates state court system funding among the state, counties, and users of courts." Revision 7 was to be "fully effectuated" by July 1, 2004.

Currently s. 29.008(4), F.S., provides a process for the Department of Revenue (DOR) to review whether counties are budgeting sufficient funding for certain court-related responsibilities under s. 29.008(1), F.S. These responsibilities include funding the costs of communications services, existing radio systems, existing multiagency criminal justice information systems, and local requirements pursuant to s. 29.008(2)(a)(1), F.S., as well as facilities, maintenance, utilities, and security for circuit and county courts, public defenders' offices, state attorneys' offices, guardian ad litem offices, and the offices of the clerks of the circuit and county courts performing court-related functions.

Section 29.008(4), F.S., provides a formula that dictates the minimum amount a county must budget that requires a 1.5% annual growth in the budgeted amounts for each responsibility compared to the base year, which is FY 2002-03. The statute requires the submission of budget documents by the county to the DOR, and, if the DOR finds that the county is not meeting its requirement to budget sufficient funds, requires the DOR to withhold other funds that would otherwise be remitted to a county and instead pay the county's unbudgeted court-related funding obligations.

The DOR reviewed this process and in its report *Reporting and Oversight of County Court-Related Funding Obligations: Review and Recommendations* (November 15, 2005), highlighted perceived problems. Among other recommended changes, DOR suggests that the agency be relieved of its obligation to determine county compliance with their budgeting responsibilities and that this and other of its obligations be transferred to the Department of Financial Services, in part because the agency believes the review duplicates another required to be conducted by the Chief Financial Officer (CFO)¹ and that the duty falls within the core competency of the Department of Financial Services. Under its proposal, the DOR would retain responsibility for withholding funds as directed by the CFO, based on his or her review. The DOR also suggested that actual rather than budgeted expenditures be compared and that allowances be made for exceptions such as nonrecurring expenditures made in the base year.

Proposed Changes

The bill:

- Provides for evaluation of a county's court-related *expenditures* rather than their court-related *budgets*.

¹ Counties' actual court-related expenditures are listed in documents submitted to the Chief Financial Officer pursuant to s. 29.0085, F.S.

- Changes the base year from the 2002-03 fiscal year to the average of the expenditures over the previous 5 fiscal years.
- Removes from the formula the county's responsibility to fund facilities.²
- Provides that counties' court-related funding obligations are satisfied if counties' spending grows by 1.5% annually.
- Removes the requirement for the county to submit budget documents to any entity for review and eliminates the mechanism for the withholding of certain funds from counties not in compliance with the budgeting requirements and the funds' redirection to the courts.
- Provides that counties may spend less than what the formula requires if technology and equipment innovations have resulted in savings and allows the chief judge to certify these reductions in expenditures.

C. SECTION DIRECTORY:

Section 1 amends s. 29.008, F.S., to revise the process for determining and compelling county compliance with their court-related funding responsibilities.

Section 2 amends s. 29.0085, F.S., regarding county submission of documentation of certain revenues and expenditures to the Chief Financial Officer.

Section 3 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments", below.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

² Section 29.008(1)(a) defines "facility" as "reasonable and necessary buildings and office space and appurtenant equipment and furnishings, structures, real estate, easements, and related interests in real estate, including, but not limited to, those for the purpose of housing legal materials for use by the general public and personnel, equipment, or functions of the circuit or county courts, public defenders' offices, state attorneys' offices, and court-related functions of the office of the clerks of the circuit and county courts and all storage. The term "facility" includes all wiring necessary for court reporting services. The term also includes access to parking for such facilities in connection with such court-related functions that may be available free or from a private provider or a local government for a fee. The office space provided by a county may not be less than the standards for space allotment adopted by the Department of Management Services, except this requirement applies only to facilities that are leased, or on which construction commences, after June 30, 2003. County funding must include physical modifications and improvements to all facilities as are required for compliance with the Americans with Disabilities Act. Upon mutual agreement of a county and the affected entity in this paragraph, the office space provided by the county may vary from the standards for space allotment adopted by the Department of Management Services.

1. As of July 1, 2005, equipment and furnishings shall be limited to that appropriate and customary for courtrooms, hearing rooms, jury facilities, and other public areas in courthouses and any other facility occupied by the courts, state attorneys, and public defenders. Court reporting equipment in these areas or facilities is not a responsibility of the county.

2. Equipment and furnishings under this paragraph in existence and owned by counties on July 1, 2005, except for that in the possession of the clerks, for areas other than courtrooms, hearing rooms, jury facilities, and other public areas in courthouses and any other facility occupied by the courts, state attorneys, and public defenders, shall be transferred to the state at no charge. This provision does not apply to any communication services as defined in paragraph (f).

1. Revenues:

See "Fiscal Comments", below.

2. Expenditures:

See "Fiscal Comments", below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill eliminates the Department of Revenue's (DOR) ability to withhold certain revenues from counties that are not in compliance with their responsibilities to budget required amounts to fund certain court-related responsibilities. While the DOR has calculated that it is required to withhold \$4.6 million from counties for FY 04-05 and \$18.2 million for FY 05-06, it has not yet withheld these funds. The bill does not affect the withholdings for these 2 fiscal years but would eliminate the DOR's ability to withhold funds in future years, thus counties would not be subject to withholding in the future.

Accordingly, since the circuit courts serving these counties would have received the withheld funds, under this bill, these circuit courts would not receive such funds in the future.

Since the bill explicitly limits counties' funding obligations for certain court-related responsibilities, if the funding formula requires less funding than the county otherwise would have provided, the circuit courts will receive less funding from the counties for counties' court-related responsibilities in the future.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear what impact a chief judge's choice to certify or not certify a county's reduced expenditures, as provided for in section 1 of the bill, would have upon county expenditures.

Section 29.0085(1), F.S., currently provides for counties to submit annually to the Chief Financial Officer a statement of revenues and expenditures which identifies total county expenditures for the court-related county responsibilities. The amendment the bill makes to this subsection appears to provide for this statement to reflect an averaging of the previous five years' revenues and expenditures.

It is unclear whether this is the intent of the bill or if, rather, the revenues and expenditures from each statement from each of the previous five years are to be averaged and reflected in a new document.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

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A bill to be entitled

An act relating to court system funding; amending s. 29.008, F.S.; defining the term "base year"; revising the provisions for determining county compliance with the funding of certain court expenses; amending s. 29.0085, F.S.; providing that submission of certain county fiscal information rely on certain base year statements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 29.008, Florida Statutes, is amended to read:

29.008 County funding of court-related functions.--

(4)(a) For purposes of this subsection, the term "base year" means the average of the expenditures over the previous 5 fiscal years for the items specified in paragraphs (1)(c)-(h).

(b) A county may demonstrate compliance with its funding obligations under this section by showing a 1.5 percent growth per year in expenditures for the ~~Except for revenues used for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness as allowed under s. 218.25(1), (2) or (4), the Department of Revenue shall withhold revenue sharing receipts distributed pursuant to part II of chapter 218 from any county not in compliance with the county funding obligations for items specified in paragraphs (1)(c)-(h)(a), (c), (d), (e), (f), (g), and (h) and subsection (3) over the base year statement required under s. 29.0085;~~

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29 however, a county may expend less than the amount specified in
 30 this paragraph if the difference is attributable to savings
 31 realized through technology and equipment innovations. Any such
 32 reduced expenditures may be certified by the chief judge of the
 33 county. ~~The department shall withhold an amount equal to the~~
 34 ~~difference between the amount spent by the county for the~~
 35 ~~particular item in county fiscal year 2002-2003, the base year,~~
 36 ~~plus 3 percent, and the amount budgeted by the county for these~~
 37 ~~obligations in county fiscal year 2004-2005, if the latter is~~
 38 ~~less than the former. Every year thereafter, the department~~
 39 ~~shall withhold such an amount if the amount budgeted in that~~
 40 ~~year is less than the base year plus 1.5 percent growth per~~
 41 ~~year. On or before December 31, 2004, counties shall send to the~~
 42 ~~department a certified copy of their budget documents for the~~
 43 ~~respective 2 years, separately identifying expenditure amounts~~
 44 ~~for each county funding obligation specified in paragraphs~~
 45 ~~(1)(a), (c), (d), (e), (f), (g), and (h) and subsection (3).~~
 46 ~~Each year thereafter, on or before December 31 of that year,~~
 47 ~~each county shall send a certified copy of its budget document~~
 48 ~~to the department.~~

49 ~~(b) Beginning in fiscal year 2005-2006, additional amounts~~
 50 ~~shall be withheld pursuant to paragraph (a), if the amount spent~~
 51 ~~in the previous fiscal year on the items specified in paragraphs~~
 52 ~~(1)(a), (c), (d), (e), (f), (g), and (h), and subsection (3) is~~
 53 ~~less than the amount budgeted for those items. Each county shall~~
 54 ~~certify expenditures for these county obligations for the prior~~
 55 ~~fiscal year to the department within 90 days after the end of~~
 56 ~~the fiscal year.~~

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57 ~~(c) The department shall transfer the withheld payments to~~
58 ~~the General Revenue Fund by March 31 of each year. These~~
59 ~~payments are hereby appropriated to the Department of Revenue to~~
60 ~~pay for these responsibilities on behalf of the county.~~

61 Section 2. Subsection (1) of section 29.0085, Florida
62 Statutes, is amended to read:

63 29.0085 Annual statement of certain revenues and
64 expenditures.--

65 (1) Each county shall submit annually to the Chief
66 Financial Officer a statement of revenues and expenditures as
67 set forth in this section in the form and manner prescribed by
68 the Chief Financial Officer in consultation with the Legislative
69 Committee on Intergovernmental Relations, provided that such
70 statement identify total county expenditures on each of the
71 services outlined in s. 29.008. The statement submitted pursuant
72 to this section for the average of the previous 5 county fiscal
73 years shall be the base year statement.

74 Section 3. This act shall take effect July 1, 2006.